

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Amendment of Part 90 of the
Commission's Rules To Provide
for the Use of the 220-222 MHz Band
by the Private Land Mobile Radio Service

PR Docket No. 89-552

Implementation of Sections 3(n) and 332
of the Communications Act

GN Docket No. 93-252

Regulatory Treatment of Mobile Services

Geographic Partitioning and Spectrum
Disaggregation for the 220-222 MHz Service

**PETITION FOR RECONSIDERATION;
REQUEST FOR EXPEDITED ACTION**

Rand McNally & Company ("RMC") hereby petitions the Commission to reconsider its decision in its Fifth Report and Order¹, in the above captioned proceeding ("Order"). More particularly, RMC asks the Commission to rescind that portion of the partitioning rules announced in the decision that invites licensees in the 220-222 MHz Band (the "220 MHz Band") to make use of RMC's proprietary MTA or BTA Listings.² Said use constitutes an infringement of RMC's copyright, both directly by the Commission's use, and indirectly by encouraging licensees in the 220 MHz Band to infringe on RMC's property right.

**I. DISCUSSION: THE COMMISSION MAY NOT USE THE MTA/BTA LISTINGS
FOR LICENSING THE 220 MHZ BAND WITHOUT RMC'S CONSENT.**

As the Commission has recognized, RMC is the copyright owner of the MTA/BTA Listings.³ Neither the Commission nor any of its licensees may make use

¹ 63 Fed. Reg. 49291 (Sept. 15, 1998).

² Order, supra, ¶ 13 and 47 C.F.R. § 90.1019(c).

³ See, e.g., Report and Order and Second Notice of Proposed Rule Making, Amendment of Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Band, 12 FCC Rcd. 18600, 18610 n.32 (1997) ("39 GHz Order"); Report and Order, Amendment of Parts 21 and 74 of the Commission Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, 10 FCC Rcd. 9589, 9608 (1995) ("MDS Order").

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of the MTA/BTA geographic boundaries in connection with the licensing or use of the 220 MHz Band without RMC's consent.

Yet, despite RMC's considerable copyright interest in its MTA and BTA Listings and the lack of any agreement or grant of permission to the FCC or anyone else to use these Listings for licensing in the 220 MHz Band, the Commission's partitioning rules adopted in the Order make use of the MTA and BTA Listings and encourage Commission licensees to do as well. See Note 2, supra. The Commission's Order does not even attempt to explain the basis upon which the Commission, much less its licensees, might purport to have rights to use RMC's copyrighted MTA and BTA Listings for this purpose, nor could any cogent explanation be offered.

While RMC has, with the Commission's knowing encouragement, entered into licensing agreements for the use of MTA/BTA Listings in connection with the licensing of other services, the licensing agreements under which the Commission (and others) have been issued authority to employ the MTA/BTA Listings have been clearly limited to specific licensed services and frequency bands and specifically do not include 220 MHz Band licenses. These agreements do not in any way permit or suggest that these Listings may be used by the Commission or its licensees for other services, a limitation that the Commission has recognized on several occasions.⁴

Accordingly, Section 90.1019(c)(1) of the Commission's rules regarding partitioning in the 220 MHz Band, should be amended so as not to purport to authorize licensees to use the MTA/BTA Listings for partitioning, at least in the absence of a license agreement with RMC that authorizes such use.

There is already precedent for the Commission's making the proposed rule change. Thus, comparable language to that which now appears in Section 27.15(b) was originally adopted by the Commission for its rule (Section 90.365(b)) governing the partitioning of AVM licenses.⁵ Later, however, apparently recognizing the problems of infringement, the Commission modified this provision to delete reference

⁴ See, e.g., 39 GHz Order, 18612; MDS Order, 9609.

⁵ Second Report and Order, Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, (July 14, 1998) (the "AVM Order") Appendix C.

to the MTA/BTA Listings and other "FCC recognized service areas."⁶ That same approach can and should be followed here.⁷

RMC remains willing to license the use of MTA/BTA Listings on reasonable terms, but it will not permit its property to be appropriated without just compensation and due process of law, and will take all necessary steps to remedy any unauthorized exercise of its copyright by the Commission or any other party.

II. CONCLUSION, REQUEST FOR EXPEDITION.

The Commission has no right nor authorization to use, or encourage others to use, the MTA/BTA Listings for licensing, initial or subsequent partitioning, of 220 MHz Band licenses. Absent a license agreement permitting such use, the Commission should refrain and cease and desist from infringing upon these rights.

⁶ Erratum to AVM Order, *supra* (July 20, 1998).

⁷ For the avoidance of doubt, while RMC obviously has no objection to partitioning along county lines, RMC would regard any licensee's effort to partition based upon the compilation of counties that are reflected in the MTA/BTA Listings as an infringement.

Further, because the Commission is currently infringing on RMC's copyright interests, and encouraging the infringement by others, it should act quickly to rectify the situation, so as to avoid further damage to RMC and exposure of both the Commission and its licensees to claims arising therefrom.

Respectfully submitted,

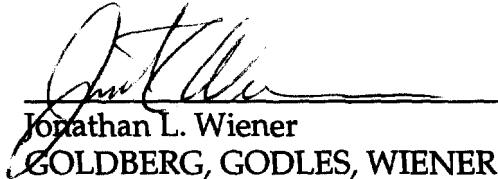
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October 13, 1998